



OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Termination of Action in the Digital Services Tax Investigation of India and Further Monitoring

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: On October 8, 2021, India joined the United States and 134 other jurisdictions participating in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting in reaching a political agreement on a two-pillar solution to address tax challenges arising from the digitalization of the world economy. As part of Pillar 1, all parties agreed to remove existing Digital Services Taxes (DSTs) and other relevant similar measures, and to coordinate the withdrawal of these taxes. On November 24, 2021, India and the United States issued statements describing a transitional approach to India's DST prior to entry into force of Pillar 1. These statements reflect a political agreement that, in defined circumstances, the DST liability that U.S. companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement. Based on the commitment of India to remove its DST pursuant to Pillar 1 and on India's political agreement to this transitional approach prior to Pillar 1's entry into force, the U.S. Trade Representative has determined to terminate the section 301 action taken in the investigation of India's DST. In coordination with the U.S. Department of the Treasury (Treasury), USTR will monitor implementation of the removal of India's DST as provided for under Pillar 1 and the transitional approach agreed to by India.

DATES: The additional duties on products of India are terminated as of November 28, 2021.

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice, please contact Benjamin Allen, Thomas Au, Patrick Childress, or Kate Hadley, Assistant General Counsels at (202) 395-9439, (202) 395-0380, (202) 395-9531, and (202) 395-3911, respectively, Robert Tanner, Director, Services and Investment at (202) 395-6125, or Brendan Lynch, Deputy Assistant U.S. Trade Representative for South and Central Asian Affairs at (202) 395-2851.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

This investigation is addressed to India’s 2020 “equalisation levy”, which is referred to throughout the investigation as India’s DST. *See, e.g.*, 86 FR 30356 (June 7, 2021) and the India DST report, published at <https://ustr.gov/sites/default/files/enforcement/301Investigations/Report%20on%20India%20%E2%80%99s%20Digital%20Services%20Tax.pdf>. For further background on the proceedings in the section 301 investigation of India’s DST, please see prior notices including: 85 FR 34709 (June 5, 2020); 86 FR 2478 (January 12, 2021); 86 FR 16824 (March 31, 2021); and 86 FR 30356 (June 7, 2021).

On June 2, 2021, the U.S. Trade Representative determined to take action in the form of additional duties on certain products of India and to immediately suspend those additional duties for up to 180 days. 86 FR 30356 (June 7, 2021).

II. OECD/G20 Negotiations

One-hundred forty-one jurisdictions are engaged in international tax negotiations under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. On October 8, 2021, India joined the United States and 134 other participants in reaching political agreement on a Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax*

Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021) at <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> (the OECD/G20 Two-Pillar Solution). The statement provides that Pillar 1 will be implemented through a multilateral convention. With respect to DSTs, the statement provides:

The Multilateral Convention (MLC) will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future. No newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC. The modality for the removal of existing Digital Services Taxes and other relevant similar measures will be appropriately coordinated.

III. India's Agreement

On November 24, 2021, The Ministry of Finance of the Government of India and Treasury issued statements reflecting a political agreement on a transitional approach to India's DST while implementing Pillar 1. *India and USA agree on a transitional approach on Equalisation Levy 2020*, MINISTRY OF FIN. OF THE GOV'T OF INDIA (Nov. 24, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1774692>; *Treasury Announces Agreement on the Transition from Existing Indian Equalization Levy to New Multilateral Solution Agreed by the OECD–G20 Inclusive Framework*, U.S. DEP'T OF THE TREAS. (Nov. 24, 2021), <https://home.treasury.gov/news/press-releases/jy0504>. Under this agreement and in defined circumstances, the liability from India's DST that U.S. companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement. The period during which the credit accrues will be from April 1, 2022, until either the implementation of Pillar 1 or March

31, 2024, whichever is earlier. In return, the United States commits to terminate the existing section 301 trade action on goods of India, and not to impose further trade actions against India with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or March 31, 2024. *Id.*

IV. Termination of Action

Section 307 of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2417), provides that “[t]he Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section [301] of this title if . . . such action is being taken under section [301(b)] of this title and is no longer appropriate.” The U.S. Trade Representative has found that the political agreement of India to the OECD/G20 Two-Pillar Solution, which provides for the removal of DSTs upon entry into force of Pillar 1, and the transitional approach agreed to by India provide a satisfactory resolution of the matters covered by the section 301 investigation of India’s DST. Accordingly, pursuant to section 307 of the Trade Act, the U.S. Trade Representative has determined that the suspended trade action in this investigation is no longer appropriate and that the action should be terminated.

The U.S. Trade Representative’s determination was made in consultation with Treasury and considers the advice of the interagency Section 301 Committee, consultations with representatives of the domestic industry concerned, and public comments and advisory committee advice received during the investigations.

In order to implement the termination of the section 301 action in the investigation of India’s DST, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by the Annex to this notice.

V. Ongoing Monitoring

Section 306(a) of the Trade Act (19 U.S.C. 2416(a)) provides that “[t]he Trade Representative shall monitor the implementation of each measure undertaken, or

agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation. . . .” Section 306(b) (19 U.S.C. 2416(b)) provides that “[i]f, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section [301(a)].” Pursuant to section 306(a) of the Trade Act, the U.S. Trade Representative, in coordination with Treasury, will monitor the implementation of the political agreement on an OECD/G20 Two-Pillar Solution as pertaining to DSTs, India’s agreement as reflected in the November 24 statements, and associated measures. Pursuant to section 306(b) of the Trade Act, if the U.S. Trade Representative, in consultation with Treasury, subsequently considers that India is not satisfactorily implementing these political agreements or associated measures, then the U.S. Trade Representative will consider further action under section 301.

ANNEX

The U.S. Trade Representative has decided to terminate the additional duties under heading 9903.90.03 of the HTSUS on articles the product of India, as provided for in U.S. notes 24(a) and 24(b) to subchapter III of chapter 99 of the HTSUS. The termination of these additional duties is effective on November 28, 2021.

In accordance with this determination, the U.S. Trade Representative has determined to modify the HTSUS by: (1) deleting U.S. notes 24(a) and 24(b) to subchapter III of chapter 99 of the HTSUS; and (2) by deleting HTSUS heading 9903.90.03. The modifications of the HTSUS are effective on November 28, 2021. Any provisions of previous notices issued in this investigation that are inconsistent with this notice are superseded to the extent of such inconsistency.

Greta Peisch,

General Counsel,

Office of the United States Trade Representative.

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